No. 86-277

Supreme Court, U.S.
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CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

CHARLES WALKER,

Petitioner,

v.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Illinois

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1. Whether this petition is properly before the court where petitioner has refused to consent to the filing of the action, as evidenced by his unwillingness to sign a petition seeking to proceed *in forma pauperis*.
2. Whether petitioner's guilty plea was knowing and intelligent where he was correctly admonished that the minimum sentence for murder was twenty (20) years.
3. Whether petitioner's guilty plea was knowing and intelligent where the record demonstrates his awareness that the minimum sentence he would receive would be natural life.
4. Whether petitioner's guilty plea was knowing and intelligent where he was advised that he would be sentenced to a term of imprisonment only if the jury rejected the death penalty and the jury in fact sentenced petitioner to death.

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In The

Supreme Court of the United States

October Term, 1986

CHARLES WALKER,

Petitioner,

v.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition For A Writ Of Certiorari
To The Supreme Court Of Illinois

RESPONDENT'S BRIEF IN OPPOSITION

STATEMENT OF THE CASE

Charles Walker ("petitioner") was charged by information with the murder of Kevin Paule and Sharon Winker and the armed robbery of Richard Jones. Prior to trial the prosecution announced its intent to seek the death penalty. Petitioner was then found guilty following a plea of guilty. During the plea proceedings the trial court advised petitioner that the minimum sentence for murder was twenty (20) years. A jury sentenced petitioner to death. On appeal, the Illinois Supreme Court affirmed the judgment against petitioner, finding that petitioner was correctly advised of the possible sentence and that, re-

gardless, petitioner was not prejudiced by the court's admonishment. *People v. Walker*, 109 Ill.2d 484, 497-98 (1985).

On April 14, 1986, counsel for petitioner filed a Petition for Writ of Certiorari in this Court. Petitioner refused to execute a petition for leave to proceed *in forma pauperis*. As a result, on August 14, 1986, counsel for petitioner paid the filing fee in this Court and re-filed the petition.

REASONS FOR DENYING THE WRIT

I.

THIS COURT SHOULD DENY CERTIORARI BECAUSE PETITIONER HAS SHOWN THAT HE DOES NOT WISH TO PROCEED IN THIS COURT.

On April 4, 1986, counsel for petitioner filed a Petition for Writ of Certiorari in this Court. However, petitioner refused to execute a petition for leave to proceed *in forma pauperis*.[1] Subsequently, counsel for petitioner paid this Court's filing fee, changed the form of the petition, and re-filed. The petition was then docketed.

Counsel for petitioner does not have standing to present this petition. Standing would be proper only if counsel sought to proceed as a "next friend." *Gilmore v. Utah*, 429 U.S. 1012, 1013, 97 S.Ct. 436, 50 L.Ed.2d 632 (1970). Counsel has filed no such application. In addition, any attempt to proceed as a next friend would fail where there

[1] Petitioner's desire to terminate counsel's representation is well-documented. His *pro se* motion to terminate proceedings in the Illinois Supreme Court was denied. (See Appendix)

is no evidence that petitioner is unable to seek relief in his own behalf. *Rosenberg v. United States*, 346 U.S. 273, 291, 73 S.Ct. 1152, 1161, 97 L.Ed. 1607 (1957).

For these reasons, the present petition should be dismissed.

II.

PETITIONER'S GUILTY PLEA WAS KNOWING AND INTELLIGENT WHERE HE WAS CORRECTLY ADMONISHED CONCERNING THE POSSIBLE SENTENCE AND WHERE, REGARDLESS, HE WAS NOT PREJUDICED WHERE HE UNDERSTOOD THAT THE MINIMUM SENTENCE HE WOULD RECEIVE WOULD BE NATURAL LIFE.

Petitioner argues that his plea was involuntary for purposes of this Court's decision in *Boykin v. Alabama*, 395 U.S. 239, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969), because he was incorrectly advised prior to pleading guilty that the minimum prison term for murder was twenty (20) years. This argument fails where, as the Illinois Supreme Court ruled, the minimum sentence was twenty (20) years. In addition, regardless of the correctness of the admonishment, the record indicates that the plea was knowing and intelligent because petitioner had no expectation of receiving a prison term of less than natural life. Finally, petitioner was not prejudiced because a term of imprisonment was possible only if petitioner was not sentenced to death.

A. Petitioner Waived The Contention Raised Here Where He Failed To Raise It In Either Of His Motions To Vacate His Guilty Plea.

Illinois Supreme Court Rule 604(d) provides that:

> Upon appeal any issue not raised by the defendant in the motion to withdraw the plea of guilty and vacate the judgment shall be deemed waived.

Ill. Rev. Stat., 1983, ch. 110A, sec. 604(d). See: *People v. Paul*, 93 Ill. App. 3d 302, 417 N.E.2d 251 (2d Dist. 1981), and *People v. Tompkins*, 24 Ill. App. 3d 470, 321 N.E.2d 326 (1st Dist. 1974). In the present case petitioner filed two motions seeking to vacate his guilty plea. However, he did not allege that the guilty plea was involuntary because of an incorrect admonishment concerning the minimum sentence for murder. For this reason petitioner has waived consideration of the issue, *People v. McKean*, 94 Ill. App. 3d 502, 418 N.E.2d 1130 (2d Dist. 1981); *People v. Jones*, 74 Ill. App. 3d 243, 392 N.E.2d 973 (1st Dist. 1979), rendering review by this Court improper.

B. Petitioner Was Correctly Admonished That The Minimum Sentence For Murder Was Twenty Years.

Petitioner's argument hinges on his conclusion that Illinois law requires a minimum sentence of natural life for petitioner's commission of two (2) murders. *Ill. Rev. Stat.*, 1980, ch. 38, sec. 1005-8-1(a)(1)(c). Petitioner bases this argument on the Illinois Supreme Court's decision in *People v. Taylor*, 102 Ill.2d 201, 464 N.E.2d 1059 (1984). However, at the time of petitioner's guilty plea *Taylor* had not been decided. The Illinois Supreme Court interpreted this to mean that a natural life term was not required and the trial court's admonishment was correct. *People v. Walker*, 109 Ill.2d 484, 497 (1985). Contrary to petitioner's suggestion, this Court should not interfere with the Illinois courts' interpretation of its own statute.

C. Petitioner's Guilty Plea Was Knowing And Intelligent Where He Understood That The Minimum Sentence Which He Would Receive For His Crimes Was Natural Life.

The Illinois Supreme Court adopted Rule 402 in order to comply with this Court's decision in *Boykin v. Alabama*,

395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). (*Ill. Rev. Stat.*, 1981, ch. 110A, sec. 402) requires only substantial, not literal, compliance with its provisions. *People v. Krantz*, 58 Ill.2d 187, 317 N.E.2d 559 (1974); *People v. McCoy*, 74 Ill.2d 398, 385 N.E.2d 696 (1979). Even when a defendant is incorrectly admonished pursuant to Rule 402, Illinois courts refuse to vacate a guilty plea absent proof of prejudice to the defendant. *People v. Miller*, 107 Ill. App. 3d 1078, 438 N.E.2d 643 (1st Dist. 1982); *People v. Hoyer*, 100 Ill. App. 3d 418, 420, 426 N.E.2d 1139 (1st Dist. 1980).

The record in this case reveals that petitioner was not prejudiced by the trial court's admonishment. Obviously, prejudice exists here only if petitioner believed that he might be sentenced to a term of imprisonment of less than natural life if he entered a plea of guilty. However, the record indicates that petitioner can make no such claim. During his testimony at sentencing, petitioner pleaded with the jury to spare his life, asking for nothing more than to be sentenced to the penitentiary for the rest of his life. (R. 309) During closing argument defense counsel stated that he was:

> [P]leading for [petitioner] to be thrown in four dark walls and bars and deprived of his liberty for the rest of his life. (R. 322)

Counsel also argued:

> I must ask for him to be able to spend the rest of his life behind four walls, with hostile guards. (R. 323)

Based on these facts it is clear that petitioner did not anticipate the possibility of a sentence less severe than natural life. The incorrect admonishment then did not prejudice him in any way. As the Illinois Supreme Court noted, "Walker's contention that he pleaded guilty because of a belief from the court's admonition that he could be

sentenced to a term of years is untenable on this record." *People v. Walker*, 119 Ill.2d 484, 499 (1985).

The cases cited by petitioner are not dispositive of this issue. For example, in *People v. Fred*, 17 Ill. App. 3d 730, 308 N.E.2d 219 (4th Dist. 1974), an armed robbery prosecution for that offense was two (2) years when it actually was five (5) years. Counsel argued that defendant should receive the minimum sentence and defendant was in fact sentenced to an indeterminate prison term of between five (5) and ten (10) years. 308 N.E.2d at 220-21. On appeal, the Court found that the incorrect admonishment rendered defendant's plea involuntary. 308 N.E.2d at 221. The holding in *Fred* is not controlling in the present case because the defendant there expected a sentence which was less than the actual statutory minimum. In the present case petitioner had no such expectation.

Because petitioner understood that the minimum sentence which would apply in this case was natural life, his guilty plea was knowing and intelligent. For this reason certiorari should be denied.

D. Petitioner Was Not Prejudiced Where He Knew At The Time Of The Plea That A Term Of Years Was Possible Only If The Death Penalty Was Not Imposed.

The prosecution indicated its intent to seek the death penalty prior to petitioner's guilty plea. After being found guilty, petitioner chose to be sentenced by a jury. Therefore, at the time of the plea, petitioner was aware that, under Illinois law, he was eligible for a prison term only if the jury rejected the death penalty. *Ill. Rev. Stat.*, 1983, ch. 38, sec. 9-1(g). However, the jury sentenced petitioner to death. For this reason petitioner was not prejudiced by the trial court's admonishment.

CONCLUSION

For these reasons, respondent requests this Court to deny the Petition for a Writ of Certiorari in this cause.

Respectfully submitted,

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Solicitor General, State of Illinois

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* Counsel of Record

APPENDIX

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[Filed 1-16-86]

CHARLES T. WALKER
REG. NO. A-76374
CONDEMN UNIT
MENARD, ILL. 62259

SUPREME COURT CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL 62706

ATT'N: SUPREME COURT JUSTICES

WITH THIS LETTER I OFFICIALLY INFORM THE COURT THAT I WISH TO SUSPEND AND HALT ALL FURTHER PETITIONS AND APPEALS IN MY CASE. AS ACCORDING TO ILLINOIS STATE LAW A DEFENDANT MAY HALT PROCEEDINGS ONCE AN APPEAL HAS BEEN DENIED. ON FRIDAY DEC. 20, 1985 A DENIAL WAS HANDED DOWN ON MY CASE (DOCKET NO. 59212). WITH MANDATE TO BE ISSUED ON JAN. 17, 1986.

I HAVE INFORMED THE STATE APPELLATE DEFENDER'S OFFICE OF MY DECISION TO HALT ANY FURTHER ACTION, WHICH THEY SEEM LIKE THEY DON'T WANT TO ACCEPT. SO ANY FURTHER ACTION BY THEM IS WITHOUT MY APPROVAL.

I DO HAVE ONE QUESTION TO ASK. AND THAT IS SINCE LETHAL INJECTION IS THE METHOD OF EXECUTION IS IT POSSIBLE FOR ME TO BE EXECUTED HERE AT MENARD. MY FAMILY PLANS ON CLAIMING MY BODY AND HAVING IT BURIED IN THE FAMILY BURIAL PLOT.

THANK YOU FOR YOUR TIME AND CONSIDERATION.

RESPECTFULLY YOURS,

/s/ Charles T. Walker
CHARLES T. WALKER

[Notarization omitted in printing.]

App. 2

IN THE SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

No. 59212 v.

CHARLES WALKER,

Defendant-Appellant.

Appeal from the Circuit Court of the Twentieth Judicial Circuit, St. Clair County, Illinois, No. 83-CF-491.
Honorable John J. Hoban, *Judge Presiding.*

RESPONSE TO THE MOTION BY *PRO SE* APPELLANT TO TERMINATE FURTHER PROCEEDINGS

NOTICE AND PROOF OF SERVICE

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Appellate Defender
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(217) 782-1989

LAWRENCE J. ESSIG
Appellate Defender

Counsel for Defendant-Appellant

IN THE SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

No. 59212 v.

CHARLES WALKER,

Defendant-Appellant.

Appeal from the Circuit Court of the Twentieth Judicial Circuit, St. Clair County, Illinois, No. 83-CF-491.

Honorable John J. Hoban, *Judge Presiding.*

RESPONSE TO THE MOTION BY *PRO SE* APPELLANT TO TERMINATE FURTHER PROCEEDINGS

Now comes LAWRENCE J. ESSIG, Supreme Court Unit, Office of the State Appellate Defender, counsel for appellant CHARLES WALKER in the above-entitled cause, and states on oath:

1. That the present cause involves the imposition of the death penalty.

2. That on December 20, 1985, this Court filed an opinion affirming appellant's convictions and sentence of death, and ordered that the mandate would not issue if a Petition for Rehearing were filed by January 10, 1986.

3. That on January 10, 1986, a Petition for Rehearing in this cause was filed.

4. That on January 28, 1986, this Court ordered that the Office of the State Appellate Defender respond to the motion by *pro se* appellant to terminate these proceedings in this case.

5. That counsel responds by acknowledging that appellant has expressed a desire to terminate these proceedings. However, counsel also has had direct communications with many close friends and relatives of the appellant since the time of the filing of his motion, and appellant has at times indicated that he may reconsider his position. This situation is consistent with the history of other capital defendants in similar situations here in Illinois. *People v. Davis*, 95 Ill.2d 1 (Docket No. 54276) (1983); *People v. Silagy*, 101 Ill.2d 147 (Docket No. 53776) (1984). In these cases, each of the capital defendants indicated a desire to terminate his appeal, but later changed his mind and is now actively engaged in pursuing relief in his case.

6. That counsel also submits that the pending Petition for Rehearing is an integral part of the mandatory direct appeal in this capital prosecution. Prior rulings of this Court have confirmed the importance of rehearing petitions in the direct appeal process, particularly in capital cases. See *People v. Williams*, 93 Ill.2d 309, 444 N.E.2d 136 (1982).

7. That in order to insure the rational and consistent review of death penalty cases in Illinois, this Court should continue here its practice of reviewing rehearing petitions in capital cases.

WHEREFORE, counsel respectfully requests that this Court deny *pro se* appellant's motion to terminate the proceedings in this case.

Respectfully submitted,

/s/ Lawrence J. Essig
LAWRENCE J. ESSIG
Appellate Defender

[Notarization omitted in printing.]

IN THE SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

No. 59212 v.

CHARLES WALKER,

Defendant-Appellant.

Appeal from the Circuit Court of the Twentieth Judicial Circuit, St. Clair County, Illinois, No. 83-CF-491.
Honorable John J. Hoban, *Judge Presiding.*

NOTICE AND PROOF OF SERVICE

TO: Neil F. Hartigan
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Menard, Illinois 62259

All Justices of the
Supreme Court

Please take notice that I have delivered the original of the Response to the Motion by *Pro Se* to Terminate Further Proceedings to the Clerk of the above Court and that I am serving the Attorney General and State's Attorney with one copy each, the Defendant with one copy, and all Justices with one copy each by depositing the copies in the mail in Springfield, Illinois, with sufficient prepaid

postage and addressed as indicated above on this 31st day of January, 1986.

/s/ Sheila A. Hustava
SHEILA A. HUSTAVA
Legal Secretary

[Notarization omitted in printing.]

CHARLES T. WALKER
REG. NO. A-76374
BOX 711 CONDEMN UNIT
MENARD, ILL. 62259

SUPREME COURT CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62706

ATT'N SUPREME COURT JUSTICES

WITH THIS LETTER I AM REFUTING SOME OF THE ALLEGATIONS MADE BY THE APPELLATE DEFENDER'S OFFICE IN THEIR RESPONSE TO ME WANTING TO TERMINATE ALL LEGAL PROCEEDINGS IN MY CASE.

1. ON DEC. 20, 1985 WHEN THE APPELLATE DEFENDERS OFFICE NOTIFIED ME THAT MY APPEAL HAD BEEN TURNED DOWN I TOLD THEM THEN THAT I NEVER WANTED HIM TO FILE THE PETITION FOR REHEARING.

2. ON DEC. 27, 1985 I SENT THE SUPREME COURT CLERK A NOTARIZED LETTER STATING THAT I WISHED TO STOP ALL APPEALS AND THAT A MANDATE BE ISSUED SETTING MY EXECUTION DATE.

3. ON JAN. 10, 1986 THE APPELLATE DEFENDERS OFFICE WENT AHEAD AND FILED A REHEARING PETITION WITHOUT MY PERMISSION.

4. ON JAN. 22, 1986 THE SUPREME COURT CLERK PRESENTED MY LETTER BEFORE YOU FOR CONSIDERATION----WHAT WAS THE DELAY ?????

5. ACCORDING TO ILLINOIS STATE LAW I HAVE THE RIGHT TO STOP ALL LEGAL PROCEEDINGS ANYTIME AFTER THE FIRST APPEAL IS HEARD AND CAN ASK THAT A MANDATE BE ISSUED SETTING AN EXECUTION DATE AND THAT IS WHAT I AM DOING. . . WHY AM I BEING DENIED MY CIVIL RIGHTS.???????

6. IN THE APPELLATE DEFENDERS RESPONSE HE STATES THAT I HAVE INDICATED THAT I MAY RECONSIDER MY POSITION---THAT IS AN OUTRIGHT LIE AS I TOLD THEM MY MIND WAS MADE UP AND I WASN'T GOING TO CHANGE IT. ALSO MY MY FAMILY HAS TOLD THEM THE SAME AND WISH THE SENTENCE TO BE CARRIED OUT HERE IS THEIR ADDRESSE IF YOU WANT TO CONFIRM IT SISTER LILA DOCHERTY P.O.BOX 225 OKAWVILLE, IL. 62271 PHONE 618-243-5539 SISTER MARGIE JESENICK 1014 E. MAIN ST. BELLEVILLE, IL. 62221 PHONE 618-235-9693 BROTHER DOUGLAS WALKER MAIN ST. LENZBERG, ILL. NO PHONE MOTHER LUCILLE KECK 329 N. 4th ST. BELLEVILLE, ILL PHONE 618-235-7296

7. MY CASE WAS BEFORE YOU FOR TEN MONTHS AND WAS THEN DENIED AND THEN JUST 21 DAYS LATER YOU ACCEPT A PETITION FOR REHEARING THE SAME ISSUES THAT YOU HAD JUST DENIED. SEEMS TO ME THAT MAYBE SOME OF YOU ARE FICKLE MINDED AND CAN'T DECIDE WHAT YOU THINK. MAYBE IT COULD BE THAT SOME OF YOU ARE NOT QUALIFIED TO BE SITTING ON THAT BENCH SINCE YOU DON'T KNOW YOUR OWN MIND.

8. I WANT YOU TO DECIDE ON MY DESIRE TO TERMINATE MY APPEALS NOT ON THE TWO PREVIOUS MEN WHO CHANGED THEIR MINDS AS I AM MY OWN PERSON.

RESPECTFULLY YOURS,

/s/ Charles T. Walker
CHARLES T. WALKER

[Notarization omitted in printing.]

(Letterhead Of)

State of Illinois
SUPREME COURT CLERK
Supreme Court Building
Springfield 62706

February 7, 1986

Mr. Charles T. Walker
Reg. No. A-76374
Box 711
Menard, IL 62259

THE COURT HAS TODAY ENTERED THE FOLLOWING ORDER IN THE CASE OF:

No. 59212—People State of Illinois, appellee, v. Charles Walker, appellant.

The motion by appellant, pro se, to terminate further proceedings in this case is *denied.*

JH:sdl

cc: AG/Crim (Scott Graham)
SA/St. Clair
SAD/SCU (Lawrence J Essig)

JULEANN HORNYAK, CLERK

CHARLES T. WALKER
REG. NO. A-76374
BOX 711 CONDEMN UNIT
MENARD, IL. 62259

NEIL F. HARTIGAN
ATTORNEY GENERAL
188 W. RANDOLPH, SUITE 2200
CHICAGO, IL. 60601

DEAR SIR:

TODAY FEB. 8, 1986 I RECEIVED AN ORDER FROM THE ILLINOIS STATE SUPREME COURT DENYING ME THE RIGHT TO STOP ALL LEGAL PROCEEDINGS AND HAVE AN EXECUTION DATE SET.

NOW, THE QUESTION IS HOW CAN THE COURT DO THIS AS THE ILLINOIS STATE LAW STATES THAT A PERSON SENTENCED TO DEATH MUST HAVE HIS SENTENCE APPEALED AUTOMATICALLY BUT, ANYTIME AFTER THAT APPEAL HAS BEEN TURNED DOWN HE HAS THE OPTION TO STOP ANY MORE APPEALS.

I WAS DENIED MY APPEAL AND I HAVE ACCEPTED THE SENTENCE THAT WAS GIVEN TO ME BY A JURY AND ASK THAT IT BE CARRIED OUT. IF I CAN ACCEPT THE JURYS DECISION THEN WHY CAN'T THE SUPREME COURT ACCEPT IT.

MY FAMILY HAS ALREADY MADE MY FUNERAL ARRANGEMENT AS THEY HAVE ALREADY ACCEPTED THE SENTENCE ALSO, AND HAVE TOLD THE PUBLIC APPELLATE DEFENDERS OFFICE THAT THEY ALSO WISH THAT ALL LEGAL PROCEEDINGS TO BE STOPPED.

I THOUGHT THAT IT WAS THE STATE SUPREME COURTS JOB TO SEE THAT THE ILLINOIS STATE LAW WAS TO BE ADMINISTERED CORRECTLY AND IF

THEY FIND THAT THEY DON'T AGREE WITH IT THEN THEY SHOULD ABOLISH THAT LAW, OR MAYBE IT IS THEY ARE JUST TRYING TO SIDESTEP THE ISSUE OF WHETHER IT IS CONSTITUTIONAL OR NOT.

I WOULD APPRECIATE IF YOU COULD GIVE ME SOME ADVISE ON WHAT STEPS I SHOULD TAKE NEXT???

RESPECTFULLY YOURS,

/s/ Charles T. Walker
CHARLES T. WALKER